SINGLE BENCH (4)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH

AT BILASPUR

WRIT PETITION No. 125 /2006

PETITIONER

Haravansh Das
S/o Late Shri Chhedi Lal
Aged about 35 years .
R/o- Bharat Singh
(Ex.Railway Driver),
Adarsh Nagar, In front of – Anand Niwas, Sirgitty Bilaspur, Tah & Distt-Bilaspur (C.G.)

P.R. No. 120/06
Presented on 31/1/06

VERSUS

RESPONDENTS

1) State of Chhattisgarh
Through : Secretary,
Law & Affairs Department,
D.K.S. Bhawan, Mantralay,
Raipur(C.G.)

2) Advocate General Office,
Through: Dy. Secretary
Bilaspur, Distt-Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT(S) OR ORDER(S) OR DIRECTION(S)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक WPNO. 125/06 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

26-4-2006: -

Shri Manoj Paranjpe, counsel for the petitioner.

Shri G.K. Beriwal, Deputy Advocate General for the State/ respondents.

Heard learned counsel for the parties.

By the instant petition, the petitioner, who is working as typist in the office of Advocate General, State of Chhattisgarh, has questioned legality, validity and correctness of the order dated 14-12-2005 (Annexure-P/13) whereby the services of the petitioner have been terminated on the ground that he was appointed vide order dated 19-7-2005 on the post of typist as a S.T. candidate based on the certificate issued by Tehsildar, Sohagpur, District Shahdol, M.P.. The petitioner belongs to Panika caste which has been notified as S.T. in the State of M.P. under the Presidential S.T. Order issued in the year 1950 whereas, said Panika caste has not been recognized as S.T. in the State of Chhattisgarh, as such his appointment was illegal, therefore, his services have been terminated.

The main grievance of the petitioner is that pursuant to the advertisement issued by the office of respondent No.2, Annexure-P/2, dated 14th May 2005, for the post of typist, the petitioner applied for the said post as a ST candidate showing him to be a resident of M.P. and said application of the petitioner was scrutinized by the Selection Committee, and thereafter he was selected. The petitioner had not concealed anything. As the petitioner was duly selected, therefore, respondents are not entitled to cancel or recall that appointment order. Further, that in the advertisement it was mentioned that the applicants who are the residents of Chhattisgarh and Madhya Pradesh are entitled for the appointment. It

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3— —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was not mentioned that the ST or SC candidates of M.P. shall not be entitled in that category for the appointment. Therefore, the impugned order be quashed.

Reply of the respondents is that the benefit of reservation to the posts meant for SC/ST/OBC can be given to the residents of Chhattisgarh State only. It is true that the applications were invited from the eligible candidates of State of M.P. as well as State of Chhattisgarh, but in the garb of that the petitioner cannot be extended the benefit of reservation. In this connection, provision of Article 342 of the Constitution of India is clear which envisages that "the President (may with respect to any State) after consultation with the Governor by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State.

Shri Beriwal argued that the word "in relation to that State", used in Article 342 of the Constitution of India mandates that the benefit of ST can be extended to those ST who are residents of that State, as the notification regarding ST has to be issued in relation to that State only.

Having heard learned counsel for the parties, I have perused the record. It is not disputed that SC and ST have suffered disadvantages and denied facilities for development and growth in several States. They are required protective preferences, facilities and benefits *inter alia* in the form of reservation, so as to enable them to compete on equal terms with the more advantageous and developed sections of the community. Therefore, the benefit of reservation in respect of ST as envisaged in Article 342 of the Constitution can be extended to the candidates who are

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

residents of the State where recruitment is being made, as such legally, the petitioner was not entitled for appointment on the post of typist in the office of respondent No.2 as a ST candidate because he is the resident of State of M.P. and belongs to Panika caste which has not been recognized or notified as ST in the State of Chhattisgarh. It is also true that as per the advertisement, the applications were invited from the eligible candidates who are residents of States of Madhya Pradesh and Chhattisgarh, but by inviting applications from the residents of both the States that cannot override the provision of Article 342 of the Constitution of India. The ST of State of M.P. cannot take advantage of this advertisement. It is not disputed that the applicant, while applying for the post of typist, very clearly and candidly applied as a ST candidate of State of M.P., the application was scrutinized and he was duly selected by the Selection Committee. The Selection Committee inadvertentiy failed to notice the eligibility of the petitioner that being a ST of M.P., he is not entitled for appointment in the State of Chhattisgarh as a ST candidate. To my mind, unless that mistake of fact is corrected, based on that the petitioner is not entitled for any protection and respondents would be within their right to rectify the mistake which occurred on account of the fact that Screening Committee failed to notice ineligibility of the petitioner. Fact remains that at the time of selection, the petitioner was not legally entitled to be appointed on the post of typist as a ST candidate. Therefore, for the above reasons, I do not find any illegality or infirmity in the order passed by the Deputy Secretary of Advocate General Office, Bilaspur dated 14-12-2005.

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At this stage, learned counsel for the petitioner argued that since the petitioner was appointed on the post of typist and thereafter, vacancies were advertised by other departments, but he could not apply for those posts as he was already working in the office of respondent No.2. Moreover, now, he is over age, therefore, in the interest of justice, the continuation of the petitioner as a General Category candidate be directed for consideration.

But, fact remains that the petitioner was selected in the typing test, he is performing the duties, he is not being removed from the service on the ground of inefficiency and respondent No.2 invited applications from the residents of both the States of Madhya Pradesh and Chhattisgarh. Therefore, it is appropriate and in the fitness of the case for the respondent No.2 that if there is any vacancy in the open category, then they may consider the continuation or appointment of the petitioner on the post of typist as a General category candidate.

With the aforesaid observations, the petition stands disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

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28.4.08

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